

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

WHIDBEY ENVIRONMENTAL ACTION
NETWORK (WEAN),

Petitioner,

v.

ISLAND COUNTY,

Respondent.

CASE No. 14-2-0009

**ORDER FINDING COMPLIANCE AND
CLOSING CASE**

The Petitioner initially challenged numerous provisions of Island County's Ordinance C-75-14, an update of the County's comprehensive plan and development regulations for fish and wildlife habitat conservation areas (FWHCAs). In its June 24, 2015, Final Decision and Order (FDO), the Board concluded the County failed to include Best Available Science (BAS) in designating and protecting the functions and values of critical area ecosystems, including the habitat of certain flora. In response to the FDO, Island County (County) then adopted Ordinance C-44-16 and C-71-16. The Board found the County had achieved compliance on all but one issue. That issue was remanded following a finding of continuing non-compliance in regards to the designation and protection of the Western Toad.¹ The Board now concludes the County has achieved compliance.

I. BURDEN OF PROOF

After the Board has entered a finding of non-compliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.² After that period has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has

¹ Order Finding Continuing Non-Compliance (September 29, 2016).

² RCW 36.70A.300(3)(b).

1 achieved compliance.³ For purposes of Board review of the comprehensive plans and
2 development regulations adopted by local governments in response to a noncompliance
3 finding, the presumption of validity applies and the burden is on the challenger to establish
4 that the new adoption is clearly erroneous in view of the entire record before the Board and
5 in light of the goals and requirements of the Growth Management Act (GMA).⁴ That burden
6 requires that the Petitioner demonstrate that the County's action is not in compliance with
7 the Board's order.⁵

9 In order to find the County's action clearly erroneous, the Board must be "left with the
10 firm and definite conviction that a mistake has been made."⁶

11 Within the framework of state goals and requirements, the Board must grant
12 deference to local governments in how they plan for growth:

13 In recognition of the broad range of discretion that may be exercised by
14 counties and cities in how they plan for growth, consistent with the
15 requirements and goals of this chapter, the legislature intends for the boards
16 to grant deference to the counties and cities in how they plan for growth,
17 consistent with the requirements and goals of this chapter. Local
18 comprehensive plans and development regulations require counties and
19 cities to balance priorities and options for action in full consideration of local
20 circumstances. The legislature finds that while this chapter requires local
21 planning to take place within a framework of state goals and requirements,
22 the ultimate burden and responsibility for planning, harmonizing the planning
23 goals of this chapter, and implementing a county's or city's future rests with
24 that community. RCW 36.70A.3201 (In part).

25 II. DISCUSSION AND ANALYSIS

26 Motion to Supplement

27 WEAN filed a motion to supplement the record⁷ to which the County objected.⁸
28 Motions to supplement are addressed by WAC242-03-565 which provides:

30 ³ RCW 36.70A.330(1) and (2).

31 ⁴ RCW 36.70A.320(1), (2), and (3).

32 ⁵ WAC 242-03-940(3).

⁶ *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d. 646 (1993).

⁷ WEAN's Motion of February 24, 2017 to Clarify and Supplement the Record (February 24, 2017).

⁸ Island County's Objections to Petitioner's Motion to Supplement (March 6, 2017).

1 Generally, the board will review only documents and exhibits taken from the
2 record developed by the city, county, or state in taking the action that is the
3 subject of review by the board and attached to the briefs of a party. A party by
4 motion may request that the board allow the record to be supplemented with
5 additional evidence.

6 (1) A motion to supplement the record shall be filed by the deadline
7 established in the prehearing order, shall attach a copy of the document,
8 and shall state the reasons why such evidence would be necessary or of
9 substantial assistance to the board in reaching its decision, as specified in
10 RCW 36.70A.290(4). The board may allow a later motion for
11 supplementation on rebuttal or for other good cause shown.

12 (2) Evidence arising subsequent to adoption of the challenged legislation
13 is rarely allowed except when supported by a motion to supplement
14 showing the necessity of such evidence to the board's decision concerning
15 invalidity. (Emphasis added)

16 First of all, the Board notes that this matter has been pending since 2014 and that
17 one of the many issues raised by WEAN involved designation and protection of the Western
18 Toad. WEAN has had ample time to propose record supplementation and, in fact, WEAN
19 has previously sought to supplement the record with documents supporting its argument
20 regarding the toad. As addressed below, much of WEAN's current argument opposing a
21 finding of compliance seeks to raise concerns not encompassed by the Board's most recent
22 Order Finding Continuing Non-Compliance. Additionally, the Board observes that WEAN's
23 continued renumbering of items already in the record serves only to create confusion.
24 However, having made those observations, the Board will address the pending motion.

25 While WEAN requests that the record be supplemented only with proposed IR 444,
26 IR 445, and IR 446, it also referred to additional proposed record items as addressed below:

- 27 • IR 444, the curriculum vitae of one Paul R. Adamus.

28 Adamus was the principal author of a 2007 BAS report regarding wetlands. WEAN states
29 that the toad's "use of and reliance on forest, vulnerability to pollution, and the adequacy of
30 the County's wetland regulations to prevent a net loss of its habitat" are primary issues in
31 this compliance proceeding and thus Adamus' C.V. would be of substantial assistance.

32 While that vague assertion would normally be insufficient, the fact that Adamus' prior report

1 was previously considered by the Board as BAS, the Board will allow the record to be
2 supplemented as requested.⁹

- 3 • IR 445, an excerpt from a Washington Department of Fish and Wildlife publication
4 (Ecoregions: Washington's Ecoregional Conservation Strategy).

5 WEAN contends that information on the ecoregion within which Island County is situated is
6 relevant in this compliance action. The Board does not agree and concurs with the County's
7 observation that ecoregional BAS is not an issue at this point on compliance. WEAN has not
8 shown that proposed IR 445 would be necessary or of substantial assistance to the Board.
9

- 10 • IR 446, a publication of the Watershed Company dated January 31, 2014.

11 The entire document in which proposed IR 446 is already included in the record. There is no
12 need to supplement the record with proposed IR 446.
13

- 14 • IR 447, an email exchange between WEAN's Steve Ericson and a Washington
15 Department of Fish and Wildlife (WDFW) employee.

16 WEAN asserts the exchange supports its argument regarding what WEAN refers to as the
17 defect in relying on a "static list" of designated "occurrences" for the Western toad. The
18 email exchange appears to refer to the updating of a list of rare plants. WEAN has failed to
19 establish the relevance to the compliance issue now confronting the Board. WEAN has not
20 shown that proposed IR 446 would be necessary or of substantial assistance to the Board.
21

- 22 • IR 448, a County staff report addressing the County's criteria for designating
23 species of local importance.

24 WEAN states this item is already included in the record. There is no need to supplement the
25 record with proposed IR 448.

- 26 • IR 449, IR 450, IR 452, and IR 452. Transcripts of Planning Commission and
27 County Commissioner meetings and hearings.

28 WEAN did not attach any such transcripts to its motion to supplement so it is not clear what
29 meetings and hearings are intended to be included. WEAN has not shown that these
30 proposed items would be necessary or of substantial assistance to the Board.
31
32

⁹ It is more than likely that Dr. Adamus' *curriculum vitae* was included with the referenced 2007 BAS report.

1 **The Remanded Issue**

2 In the Board's FDO of June 24, 2015 the Board found, among other things, that the
3 County had failed to designate and protect the Western toad as a species of local
4 importance.¹⁰ Thereafter, following remand and the County's adoption of an ordinance
5 addressing compliance, the Board, in its September 29, 2016 Order Finding Continuing
6 Non-Compliance, determined that the County had still failed to achieve compliance with
7 RCW 36.70A.172 and RCW 36.70A.060:
8

9 Island County purported to protect the one WDFW-documented breeding site
10 for the Western toad in Ordinance C-71-16 by referencing previously adopted
11 regulations for wetland and stream critical areas regulations. But the County
12 failed to designate the Western toad known "occurrences" as FWHCAs.¹¹
(Emphasis added)

13 More specifically, the Board observed the following:

14 Although the County did not designate the Western toad as a species of local
15 importance, it contends it has designated its breeding sites as fish and wildlife
16 habitat conservation areas, thus protecting that portion of the toad's habitat
17 with which it is known to have a primary association. At the Compliance
18 Hearing the County continued to insist it had designated the toad's breeding
19 habitat as FWHCAs. However the Ordinance is less than clear in that regard.
20 The sole language regarding the toad added to the County's Code was
Section 17.02B.210, entitled Western Toad:

21 Western Toad breeding sites, as documented by scientifically
22 verifiable data from WDFW, or a qualified professional, shall be
23 protected through the County's wetland and stream critical area
24 regulations, presently codified in Title 17.

25 That section follows ICC 17.02B.200 which is entitled "Fish and wildlife
26 habitat conservation areas" but 17.02B.210 is not a subsection of 17.02B.200.
27 Rather it appears to be a stand-alone code provision and does not specifically

28
29 ¹⁰ FDO (June 24, 2015) at 38, 39: Generally, the WDFW's priority habitat maps are the BAS for a county's
30 critical areas for listed species. WDFW's PHS indicates "any occurrence" of the Western Toad should be a
31 "priority area." At the HOM, the County agreed it departed from BAS in its failure to designate the Western
32 Toad, but states it had a "reasoned justification." . . . WAC 365-190-130(4)(b) provides that priority habitats
and species include candidate species. . . . Furthermore, the County's statement that the Toad's breeding and
egg development habitat was already protected by other regulations does not constitute a reasoned
justification for BAS departure. The County provided no evidence that it had analyzed the existing wetland and
wetland buffer protections to determine their sufficiency.

¹¹ Order Finding Continuing Non-Compliance at 16.

1 designate and protect the Western toad nor its known breeding sites as a
2 species/habitat of local importance. While counsel for the County stressed
3 that it was ***the intent*** to designate known Western toad breeding sites as
4 FWHCAs; that intent does not appear to have been realized. (Footnotes
omitted)¹²

5 The Board then added:

6
7 The Board acknowledges what appear to be decreasing concerns regarding
8 the toad. However, so long as the Western toad remains a state candidate
9 species, it must be considered for protection. That protection could begin with
10 designation of the Western toad itself or, based on the BAS in the record, with
11 designation of the toad's known habitat. Under WAC 365-190-080(4), critical
12 areas can be designated by maps or by performance standards, although
13 performance standards are preferred over maps. If the County's Code were to
14 be clarified, protection of the Western toad could then be addressed through
preparation of a Biological Site Assessment pursuant to ICC 17.02B.410.
(Footnotes omitted; Emphasis added)¹³

15 **The County's Compliance Action**

16 The County then adopted Ordinance No. C-02-17 which it contends directly
17 addresses the Board's most recent finding of continuing non-compliance.¹⁴ The County
18 amended the County code as follows and designated as Fish and Wildlife Habitat
19 Conservation Areas all currently known site "occurrences":

20
21 ICC 17.02B.210 Western Toad breeding sites, as documented by
22 scientifically verifiable data from WDFW, or a qualified professional, shall be
23 protected through the county's wetland and stream critical areas regulations,
24 presently codified in title 17. Such breeding sites, as they are presently known
25 and documented as provided above, or may later be identified through the
26 processing of site-specific land use and development permits or other
27 scientifically verifiable data, are designated as Fish and Wildlife Habitat
28 Conservation Areas. Also designated as Fish and Wildlife Habitat
Conservation Areas are the occurrences identified on The Watershed
Company Map, April 2016. (Underlining indicates amendatory language)

32 ¹² *Id.* at 14, 15.

¹³ *Id.* at 15, 16.

¹⁴ Ordinance No. C-02-17, adopted January 24, 2017.

1 The County states that protection is then accomplished by requiring development within
2 1000 feet of the known occurrences to conduct a Biological Site Assessment (BSA).¹⁵
3

4 **Board Analysis**

5 **A.** WEAN in essence attempts to supplement and reargue its original challenge. Just
6 as it did in its July 2016 objections,¹⁶ it addresses the GMA requirements to designate
7 critical areas and to adopt development regulations protecting them. It observes that
8 designation and protection must include BAS and that departure from BAS requires a
9 “reasoned justification”.¹⁷ It also argues at length, as it did in July of 2016,¹⁸ what it contends
10 BAS indicates should be required for designation and protection of the toad.¹⁹ In essence,
11 much of its argument constitutes an untimely request for reconsideration.²⁰
12

13 WEAN apparently fails to grasp that the bulk of the issues it is arguing have been
14 decided. The Board’s finding of continuing non-compliance was based primarily on the fact
15 that the County’s prior attempt to designate and protect Western toad habitat failed as a
16 result of poorly crafted regulations.²¹ Additionally, the Board observed that the BAS in the
17 record established that any “occurrence” of the toad was a “priority area” and that:
18

19 PHS in turn references the NatureServ Species Report which then states
20 under Minimum Criteria for an Occurrence: “Occurrences are based on
21 evidence of historical presence, or current and likely recurring presence, at a
22 given location.”²² The State Department of Fish & Wildlife (WDFW) has

23 ¹⁵ Order Finding Continuing Non-Compliance (September 29, 2016) at 13: “. . . , the County adopted ICC
24 17.02B.210 which, when combined with ICC 17.02B.410, requires the preparation of a Biological Site
25 Assessment or BSA whenever development is proposed within 1000 feet of a protected species, a critical
26 area, or its buffer.”

27 ¹⁶ See WEAN’s Objections to Finding Compliance (July 28, 2016).

28 ¹⁷ WEAN’s 2nd Objections to Finding Compliance at 2-7.

29 ¹⁸ See WEAN’s Objections to Finding Compliance at 34-42.

30 ¹⁹ WEAN’s 2nd Objections to Finding Compliance at 8-18.

31 ²⁰ WAC 242-03-830(1).

32 ²¹ Order Finding Continuing Non-Compliance at 15: At the Compliance Hearing the County continued to insist
it had designated the toad’s breeding habitat as FWHCAS. However the Ordinance is less than clear in that
regard. . . . That section [ICC 17.02B.210] follows ICC 17.02B.200 which is entitled “Fish and wildlife habitat
conservation areas” but 17.02B.210 is not a subsection of 17.02B.200. Rather it appears to be a stand-alone
code provision and does not specifically designate and protect the Western toad nor its known breeding sites
as a species/habitat of local importance. While counsel for the County stressed that it was **the intent** to
designate known Western toad breeding sites as FWHCAS; that intent does not appear to have been realized.

²² <http://explorer.natureserve.org/servlet/NatureServe?searchName=Bufo+boreas>. See Population/Occurrence
Delineation.

1 documented three “occurrences” of the Western toad in Island County, “one
2 of which is a breeding site.”²³ The other two WDFW-documented sites are
3 terrestrial nonbreeding habitat. The record before the Board thus indicates
4 there are possibly three locations evidencing current or likely recurring
5 presence. WDFW PHS information is considered to be Best Available
6 Science. (Some footnotes omitted)

7 WDFW’s Priority Habitat and Species List (PHS), referenced in the quoted paragraph
8 above, constitutes BAS.²⁴ The County in its most recent compliance action supplemented
9 its BAS in regards to those occurrences. It “commissioned technical analysis to clarify how
10 priority areas within the context of the Priority Habitats and Species (PHS) list could be
11 considered in ‘guiding the Island County management approach for the Western toad’”.²⁵
12 Included within that analysis was the following:

13 In the case of the Western toad, a review of best available science
14 (summarized in The Watershed Company memorandum dated May 5, 2016)
15 indicates that wetland breeding habitats are critical to completion of the life
16 cycle of the Western toad. In contrast, the upland habitat characteristics
17 associated with Western toad are not well understood. Given this current
18 limited understanding of upland habitat usage, the mapped upland
19 occurrence of the Western toad in Island County may not lend itself directly to
20 site-specific management measures.²⁶ (Emphasis added)

21 Thereafter, The Watershed Company, the entity the County had engaged to
22 assemble and analyze applicable BAS, published updated information in which it observed:

23 The proposed Island County Fish and Wildlife Habitat Conservation Area
24 provisions address scientifically verifiable Western toad breeding sites,
25 because these sites represent areas with which the species is known to have
26 a primary association. This approach to protecting habitats with which the
27 species has a primary association is consistent with the Growth Management
28 Act approach to designating habitat conservation areas for threatened and
29 endangered species (WAC 365-190-130(2)(a)), and therefore, should be
30 sufficient to address candidate species. A biological site assessment (BSA)
31 as required under ICC 17.02B.510 (Evaluation Requirements – Fish and
32 Wildlife Habitat Conservation Areas), would determine appropriate

²³ Finding 4.2.3 of Island County Ordinance C-71-16, p.7 (June 23, 2016). Also Ex. 39.

²⁴ See WAC 365-190-130(4)(b).

²⁵ Island County Compliance Report (February 9, 2017) at 16.

²⁶ IR. 80, Technical Memorandum from the Watershed Company (November 22, 2016) at 1-2.

1 management measures to conserve the species within 1,000 feet of verifiable
2 breeding areas.²⁷

3 Until early January 2017, The Watershed Company information, citing WDFW's PHS
4 data, had only documented three Western toad "occurrences".²⁸ However, shortly before
5 the compliance action was finalized, additional consultation with WDFW requesting updated
6 PHS information identified three additional occurrence locations. Based on that new
7 information, the final regulation adopted by the County included the final sentence of ICC
8 17.02B.210: "Also designated as Fish and Wildlife Habitat Conservation Areas are the
9 occurrences identified by Priority Habitat Species data from WDFW as it existed on January
10 24, 2017." Thus all six BAS verified occurrences of the Western toad have been designated
11 as FWHCAs.
12

13 The County summarizes its argument by stating that if development is proposed
14 within 1,000 feet of any of the six occurrences, a Biological Site Assessment²⁹ will be
15 required.³⁰ It also explains that any additional breeding site occurrences verified by WDFW
16 would be added to its map of designated toad FWHCAs.
17

18
19 **B. A summary of WEAN's compliance objections includes the following:**³¹

20 1. The County has failed to regulate logging which harms Western toad habitat.

21 First of all, WAC 242-03-940 provides that "Issues not within the nature, scope, and
22 statutory basis of the conclusions of noncompliance in the prior order will not be addressed
23

24
25 ²⁷ IR 93, Island County Fish and Wildlife Habitat Conservation Areas-Supplemental Memorandum to Assist
26 Planning Commission in its Review (January 5, 2017) at 1.

27 ²⁸ As stated above, an "occurrence", according to PHS, is "based on evidence of historical presence, or current
28 and likely recurring presence, at a given location".

29 <http://explorer.natureserve.org/ser;et/NatureServe?searchName=Bufo+boreas>.

30 ²⁹ 17.02B.410A. Site assessment and submittal requirements. When a development proposal is located
31 within 1,000 feet of a habitat for a protected species or an identified critical area or its buffer, based upon
32 maps and other information available to or maintained by the county, as described in section
17.02B.200.C., and when the applicant proposes to alter, decrease or average a standard stream buffer,
a biological site assessment (BSA) shall be required.

1. The requirement for a BSA may be waived by the director, if the director determines that the proposed
development would result in only minor impacts.

2. For activities authorized pursuant to section 17.02B.310.C.7. no BSA shall be required provided that: ...

³⁰ Island County Compliance Report (February 9, 2017) at 27.

³¹ WEAN's 2nd Objections to Finding Compliance at 15-25.

1 in the compliance hearing but require the filing of a new petition for review.” WEAN has filed
2 such a petition; WEAN will have an opportunity to present its argument regarding logging
3 regulations.³² Logging regulations to protect upland toad habitat was not specifically raised
4 at the compliance hearing, and the BAS in the record includes the following observation:

5 “There is an intuitive connection between habitat loss from development . . . , however,
6 scientific validation of the relationship is relatively limited.”³³
7

- 8 2. The County’s adopted regulations do not facially apply to toad breeding sites; the
9 1000 foot buffer requirement is not consistent with BAS, and the County’s reliance
10 on a static map which will not be updated until next update is contrary to BAS.

11 The third of those allegations is at best confusing. A review of the County’s code
12 shows that six known occurrences have been designated as FWHCAs.³⁴ Additional
13 occurrences may be added when verified “by scientifically verifiable data from WDFW, or a
14 qualified professional”. Thus, it appears clear that additional occurrence sites can be added
15 when verified.

16 WEAN also argues that the County’s regulations will only address protection of the
17 toad inside the 1000 foot buffers surrounding designated occurrences, arguing from another
18 angle that upland toad habitat is left unprotected and contrary to BAS. As the Board found
19 previously following consideration of the BAS in the record: “Analysis indicated upland
20 habitat in the County was not known to be a limiting factor given the broad range of habitat
21 used by the toad and the predominantly rural, undeveloped nature of the County.”³⁵ WEAN
22 is again rearguing an issue addressed in the Board’s previous compliance order.
23

- 24 3. The requirement that a biological site assessment or BSA be prepared is
25 discretionary.
26

27 While WEAN’s contention regarding discretion is technically accurate, it is important
28 to actually review the wording of the regulation. ICC 17.02B.410 requires the preparation of
29 a BSA for any development proposal within 1000 feet of a designated toad occurrence site,
30 or when a proponent proposes to alter a stream buffer. That requirement may be waived “if
31

32 ³² See GMHB No. 17-2-0006 as well as No. 17-2-0004.

³³ Ex. 39 at 3-6.

³⁴ ICC 17.02B.210.

³⁵ Order Finding Continuing Non-Compliance (September 29, 2016) at 14, citing Ex. 39 at 1-6.

1 the director determines that the proposed development would result in only minor impacts”.
2 The Board will not presume that the County will abuse its discretion in making such a
3 determination.
4

5 **C.** FWHCAs are “are areas that serve a critical role in sustaining needed habitats
6 and species for the functional integrity of the ecosystem, and which, if altered, may reduce
7 the likelihood that the species will persist over the long term”. Those areas may include “rare
8 or vulnerable ecological systems, communities, and habitat or habitat elements including
9 seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with
10 high relative population density or species richness”.³⁶
11

12 WAC 365-190-130(4) suggests methods, as well as sources of information, to be
13 used when a jurisdiction is classifying and designating FWHCAs, both for federal/state listed
14 species as well as for habitats/species of local importance. In this matter the County’s
15 compliance action involved the designation of Western toad habitat under the category of
16 habitats/species of local importance. WAC 365-190-130(4)(b) suggests that local
17 jurisdictions should consult “current information on priority habitats and species identified by
18 the Washington state department of fish and wildlife”. WDFW’s PHS information includes
19 listed species as well as “other vulnerable and unique species and habitats”.
20

21 When designating and protecting habitats or species jurisdictions must include BAS.
22 It is apparent that the County did include BAS in designating the known toad occurrences.
23 That determination was based on WDFW’s PHS, which in turn references NaturServ
24 Species Report, and on consideration of areas with which the toad has a “primary
25 association”, in accordance with WAC 365-190-130(2). That WAC section is the
26 recommended method for identifying and classifying seasonal ranges and habitat elements
27 for listed species.³⁷ The Board previously agreed with the County’s observation that, based
28 on the BAS in the record, a rationale for designating a species is to identify areas which
29
30

31
32 ³⁶ WAC 365-190-030(6).

³⁷ WAC 365-190-130(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

1 serve "a critical role in sustaining needed habitats and species for the functional integrity of
2 the ecosystem, and which, if altered, may reduce the likelihood that the species will persist
3 over the long-term".³⁸

4 The BAS in the record regarding Western toad "seasonal ranges" and "movement
5 corridors" habitat is thin. It is much more extensive in regards to "breeding habitat". See the
6 definition of FWHCA at WAC 365-190-030(6). The County's BAS has established that the
7 Western toad has a "primary association" with wetlands, which support breeding and
8 tadpole development, a critical role in sustaining the toad.³⁹ The BAS in the record does not
9 support the designation of other habitat areas. The known occurrence areas have now been
10 designated and protected. WEAN has failed to meet its burden of proof to establish
11 violations of RCW 36.70A.060 or RCW 36.70A.172.
12
13

14 **III. ORDER**

15 Based upon review of the Final Decision and Order of June 24, 2015, the September
16 29, 2016, Order Finding Continuing Non-Compliance, Island County's Compliance Report,
17 WEAN's 2nd Objections to Finding Compliance, the GMA, prior Board orders and case law,
18 having considered the arguments of the parties offered in the briefing and at the compliance
19 hearing, and having deliberated on the matter, the Board Orders:
20

- 21 • Island County's adoption of Ordinance No. C-02-17 achieved compliance with the
22 GMA and the Board's Order of Continuing Non-Compliance of September 29,
23 2016;
24
- 25 • The matter of WEAN v. Island County is dismissed and Case No.14-2-0009 is
26 **closed.**
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32 ³⁸ WAC 365-190-030(6)(a).

³⁹ It should also be restated that the Western toad is not an "endangered, threatened, or sensitive species" as referred to in that WAC section but rather is a state (not federal) candidate for such a listing.

1 SO ORDERED this 10th day of April, 2017.

2
3 _____
4 William Roehl, Board Member

5
6 _____
7 Nina Carter, Board Member

8
9 _____
10 Raymond L. Paoella, Board Member

11
12 **Note: This is a final decision and order of the Growth Management Hearings Board**
13 **issued pursuant to RCW 36.70A.300.⁴⁰**
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29 _____
30 ⁴⁰ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the
Growth Management Hearings Board is not authorized to provide legal advice.